Supreme Court, U.S.
FILED
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E. ROBERT SEAVER, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM

1970

NO. 760

FRANK MOORING, ET AL,

Petitioners

versus

LOUISIANA STATE BOARD OF
MEDICAL EXAMINERS

PETITION FOR WRIT OF CERTIORARI TO

THE LOUISIANA SUPREME COURT

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IN THE

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NO.

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

versus

FRANK MOORING

MOTION TO DISPENSE WITH PRINTING OF
PETITION FOR WRIT OF CERTIORARI

To the Chief Justice of the United States and the
Justice of the Supreme Court of the United States

The appellants hereby move to dispense with the printing of this Petition for Certiorari.

Appellants are persons of limited means, upon whom the costs of this litigation have already imposed an extensive burden. Although appellants do not feel that they can appropriately execute the affidavit required under the in forma pauperis statute, 18 U.S.C.A. sect. 1915, and therefore appellants are paying the filing fee required for the docketing of this appeal, nevertheless their limited means make it desirable that the further costs of this litigation be minimized. Appellants do not possess any substantial savings, and their living expenses and other obligations are nearly equal to their income. Accordingly, leave is requested to dispense with the printing of the Petition for Writ of Certiorari which this motion accompanies.

Joel T. Chaisson
Attorney for Appellants

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1970

NO.

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

versus

FRANK MOORING

PETITION FOR WRIT OF CERTIORARI TO THE LOUISIANA SUPREME COURT

To the Chief Justice of the United States and the Justices of the Supreme Court of the United States

Petitioners, Frank Mooring and Mrs. James Coombes, et al, pray that a writ of certiorari issue to review the judgment of the Louisiana Supreme Court rendered in these proceedings on June 29, 1970.

OPINIONS BELOW

The opinion of the 29th Judicial District Court, Parish of St. Charles, State of Louisiana, appears at Appendix A, infra, pp. 9 and 10. The opinion of the Court of Appeals, Fourth Circuit, appears at Appendix B, infra pp. 11, 12, 13, 14, 15 and 16. The judgment of the Louisiana Supreme Court affirmed the judgment of the Court of Appeals, Fourth Circuit, without opinion, Appendix C, infra, pp. 17.

JURISDICTION

This petition for certiorari was filed less than ninety (90) days from judgment of Louisiana Supreme Court on June 29, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(3).

QUESTIONS PRESENTED

1. Is the right of citizens to choose a reasonable method of treatment of their ills a civil, natural and constitutionally protected right?

2. Is the right of citizens to choose chiropractic as a reasonable choice for treatment of their ills a civil, natural and constitutionally protected right?

3. Is the State of Louisiana, through its judicial and legislative officers, under the guise of acting in the public interest and health, violating the civil, natural and constitutional rights of citizens desiring to use chiropractic services, by (1) failing to legislate reasonable licensing regulations for chiropractors (2) interpreting and administering the Louisiana Medical Practice Act in such a manner as to make it virtually impossible for a chiropractor who is not also a medical doctor to obtain a license to practice his profession.

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Amendment XIV, Section 1

. . . "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

STATEMENT OF FACTS

The Louisiana State Board of Medical Examiners instituted an action for a temporary restraining order and preliminary injunction to enjoin and prohibit Frank Mooring from practicing medicine (chiropractic) in any of its departments as defined by L.R.S. 37:1261.

Defendant filed his answer, refusing to answer the allegations of the plaintiff's petition on grounds that to answer may tend to incriminate him and he envoked the Fifth Amendment of the Constitution of the United States. Additionally, Mrs. James Coombes and Eighty (80) other patients were allowed to intervene in the case on behalf of Dr. Mooring. In their petition they averred that because of the arbitrary failure of the Louisiana Legislature to permit the licensing and regulation of the art or profession of chiropractic, that they and all individuals similarly situated are being denied the right to exercise a reasonable choice in the method of treatment of their ills; that this deprivation is violative of their civil and constitutional rights and in this respect the Louisiana Medical Practice Act, which makes no provision to exempt chiropractic, is unconstitutional. U. S. Constitution, Fifth and Fourteenth Amendments. They averred that chiropractic is a useful profession; that to deprive them of the right to seek and use the services of defendant and other chiropractors is to deprive them of life and liberty without due process of law; that to enjoin defendant and other chiropractors under color of state law from practicing their profession in Louisiana will endanger the lives of intervenors and others desiring to be treated by chiropractors for which plaintiff should be held liable for damages and attorneys fees. 42 U.S.C.A. 1983.

The lower court refused to hear testimony in this case and tried the case on affidavits only. In his judgment, the district judge held that since respondent offered no evidence controverting the allegations of mover's petition or affidavits that he must find respondent to have violated the provisions of the Louisiana Medical Practice Act, L.R.S. 37:1261, et seq.

The court further held that "intervenor's right to the pursuit of life and liberty does not allow the substitution of their wishes for the wisdom of the legislature when, acting in the public interest and public health, it prescribes standards to be met by those engaged in the practice of medicine. Nor do these wishes render unconstitutional such regulations".

In accordance with his findings, the lower court enjoined defendant from practicing medicine in the State of Louisiana until he has complied with the provisions of the Louisiana Medical Practice Act. L.R.S. 37:1261, et seq.

Frank Mooring and intervenors appealed to the Louisiana Court of Appeal, 4th Circuit. On appeal it was argued that intervenors had presented a question not considered in previous chiropractic litigation, i.e., the right of intervenors, as chiropractic patients, to excercise a reasonable choice in the method of treatment of their ills. The court of appeal held this right to be correlative to that of the chiropractor; and the court held that intervenors' right may constitutionally be limited by the same regulations and restrictions which may be validly imposed upon the chiropractor by a state in the interest of public health and welfare. The court cited Head v. New Mexico Board of Eam'rs in Optometry, which it found to be somewhat analogous. 374 U.S. 424, 83 S.Ct. 1759, 10 L.Ed.2d 983 (1963).

Frank Mooring and intervenors applied for writs to the Louisiana Supreme Court and writs were denied on June 29, 1970.

REASONS FOR GRANTING THE WRIT

The decisions below directly conflict with the 14th Amendment, U.S. Constitution. THE CONSTITUTIONAL QUESTIONS PRESENTED IN THIS APPLICATION FOR WRITS HAVE NOT BEEN PREVIOUSLY CONSIDERED BY A FEDERAL COURT IN ANY OF THE PREVIOUS CHIROPRACTIC LITIGATION.

While it appears that in Louisiana with respect to the chiropractor himself, the issues have been resolved against him the rights of chiropractic patients have never been considered and ruled upon nor how their rights affect that of their chiropractic doctor.

In this case intervenors are seeking protection of their right to exercise a reasonable choice in the method of treatment of their ills. Unquestionally, the "liberty" guaranteed by the 14th Amendment protects this precious right. Were it not so protected, the right to life, liberty and pursuit of happiness would have a shallow meaning indeed. This Honorable Court said in Meyer v. Nebraska, 262 U.S. 390, 399 (1923), "While *** (the) Court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."

The District Judge would not permit the intervenors, eighty (80) patients of Dr. Frank Mooring, to testify to the usefulness of chiropractic and to show that chiropractic was a reasonable choice for treatment of their ills. The very fact, however, that chiropractic is legalized in all of the other states of this

Union shows that it is a useful profession and that it is a reasonable method for treatment of ills. A number of the intervenors in this case had come to Louisiana from other states where there were rational and reasonable licensing regulations for chiropractors. Because of this State's requirement that a chiropractor must meet the requirements of a medical doctor in effect and qualify under the provisions of the Louisiana Medical Practice Act, a requirement that bears no reasonable relation to the practice of chiropractic, citizens are denied their "freedom of choice" in the method of their treatment. In this respect the Medical Practice Act is unconstitutional in that these citizens are denied the equal protection of the laws and the privileges and immunities under the law afforded to citizens of other states. U.S. Constitution, Fourteenth Amendment. This discrimination is obvious as Congress itself authorized chiropractic services under Medicaid, Title XIX of the Social Security Act, yet intervenors cannot avail themselves of this law in Louisiana.

Statistics from the United States Public Health Service indicate that in 1963 - 1965, 4,250,000 persons in the United States or 2.3 per cent of the civilian non-institutional population consulted a doctor of chiropractic and of the p[illegible]icare age (45 - 64), 4.2 per cent of the population of the United States received chiropractic services. Indications are that since this time, many more persons are seeking chiropractic treatment.

It is obvious, therefore, that chiropractic is a useful and accepted method of treatment for many citizens of this country and that the State of Louisiana by failing to establish reasonable regulations for chiropractors is doing more than is necessary to protect the health of its citizens and hence in its Medical Practice Act and the administration thereof has exceeded constitutional bounds.

In actual fact, the State of Louisiana, by failing to regulate chiropractors is doing its citizens a disservice because of the fact that the State Board of Medical Examiners does not diligently administer the Act against chiropractors thereby allowing those in the profession who are not qualified chiropractors to continue practicing upon the public.

CONCLUSION

Applicants respectfully pray that this Honorable Court issue a writ of certiorari to review the judgment of the Louisiana Supreme Court and after due proceedings had that the Louisiana Medical Practice Act be declared unconstitutional insofar as it deprives the citizens of a reasonable choice of the method of treatment of their illnesses and deprives them of equal protection of the laws and life and liberty without due process of law.

Respectfully Submitted,

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Attorney for Petitioners

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Of Counsel:

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Metairie, Louisiana

CERTIFICATE

STATE OF LOUISIANA

PARISH OF JEFFERSON

I, Louis G. DeSonier, Jr., Counsel for petitioners and a member of the United States Supreme Court, hereby affirm under oath that a copy of the foregoing petition for writs of certiorari has been served on the parties hereto by mail, in a properly addressed envelope, postage prepaid as follows, to wit:

Honorable Melvin J. Keenan, Clerk
Louisiana Court of Appeals, Fourth Circuit
New Orleans, Louisiana

Honorable Harold A. Moise, Jr.
Louisiana Supreme Court
New Orleans, Louisiana

James E. Blazek
847 National Bank of Commerce Building
New Orleans, Louisiana 70112

Metairie, Louisiana, this 25th day of September, 1970.

Louis G. DeSonier, Jr.

Sworn to and subscribed
before me this 25th day
of September, 1970, at Metairie, Louisiana.

Notary

APPENDIX A

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS | 29TH. JUDICIAL DISTRICT COURT

V. | PARISH OF ST. CHARLES

FRANK MOORING | STATE OF LOUISIANA

NO: 11183

Filed: April 1, 1969 ORDER By Adele A. Duplessis Jr. Clerk of Court

Rule to enjoin respondent from practicing medicine in the State of Louisiana without a certificate. Respondent appeared at the rule but refused to answer any allegations of mover's petition on grounds that to answer may tend to incriminate him. Respondent offered no evidence controverting the allegations of mover's petition or of mover's affidavits.

Hence, this Court must find respondent to have violated the provisions of the Louisiana Medical Practice Act, L.R.S. 37:1261, et seq.

Patients of respondent intervened claiming the Louisiana Medical Practice Act violated their civil and constitutional rights. They submitted affidavits alleging that to enjoin respondent would deprive them of a reasonable choice of the method of treatment of illnesses and deprive them of life and liberty without due process of law.

This Court is of the opinion that intervenor's right to the pursuit of life and liberty does not allow the substitution of their wishes for the wisdom of the legislature when, acting in the public interest and public health, it prescribes standards to be met by those engaged in the practice of medicine. Nor do these wishes render unconstitutional such regulations. Accordingly, it is Ordered, Adjudged and Decreed that a preliminary injunction issue herein restraining,

enjoining and prohibiting Frank Mooring from practicing medicine in the State of Louisiana until he has complied with the provisions of the Louisiana Medical Practice Act, L.R.S. 37:1261, et seq.

Further, the demands of intervenors are dismissed at their cost.

Read, Rendered and Signed in Open Court at Hahnville, Louisiana this 1st Day of April, 1969, at 5:50 P.M.

C. WILLIAM BRADLEY, JUDGE

A TRUE COPY
Goldie L. Gulledge
CLERK OF COURT
29th JUDICIAL DIST. COURT
PARISH OF ST. CHARLES, LA.

APPENDIX B

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS	:	NO. 3834
VERSUS	:	COURT OF APPEAL
FRANK MOORING	:	FOURTH CIRCUIT
	:	STATE OF LOUISIANA

APPEAL FROM THE TWENTY-NINTH JUDICIAL DISTRICT COURT
FOR THE PARISH OF ST. CHARLES, NO. 11,183,
HONORABLE C. WILLIAM BRADLEY, JUDGE

:::

WILLIAM V. REDMANN
JUDGE

:::

(Court composed of Judges Paul E. Chasez,
William V. Redmann and Leon J. LeSueur)

ADAMS AND REESE, James E. Blazek, Attorneys for
Plaintiff-Appellee

CHAISSON, ACCARDO & MOREL, Joel T. Chaisson, Attorneys
for Defendant and Intervenors-Appellants

AFFIRMED.

Defendant, Chiropractor Frank Mooring, and intervenors, some 80 of his patients, appeal from a preliminary injunction restraining Mooring from practicing medicine until he has complied with the provisions of the Louisiana Medical Practice Act, LSA-R.S. 37:1261 et seq.

It appears uncontroverted that defendant is engaged in the practice of chiropractic, defined by its proponents as a system of adjusting or subluxating displaced vertebrae of the spinal column by hand for the restoration of health, Louisiana St. Bd. of Med. Exam'rs v. Cronk, 157 La. 318, 102 So. 415 (1924).

Plaintiff's petition was met with an "answer" declining to answer and citing U.S. Const. Amend. V's privilege against self-incrimination. No attempt was made by defendant to rebut the allegations of the petition and supporting affidavits filed by plaintiff in support of its request for an injunction.

The petition of intervention alleges that intervenors are "patients of Dr. Frank Mooring who is resisting this effort by the plaintiff to enjoin him from practicing chiropractic."

Chiropractors are engaged in "the practice of medicine" within the provisions of LSA-R.S. 37:1261; Louisiana St. Bd. of Med. Exam'rs v. Beatty, 220 La. 1, 55 So.2d 761 (1951); Louisiana St. Bd. of Med. Exam'rs v. Fife, 162 La. 681, 111 So. 58, 54 A.L.R. 594 (1926), aff'd, 274 U.S. 720, 47 S.Ct. 590, 71 L.Ed. 1324 (1927); Louisiana St. Bd. of Med. Exam'rs v. Cronk, supra.

The United States Supreme Court has upheld the Louisiana Medical Practice Act against constitutional attacks on two occasions; England v. Louisiana St. Bd. of Med. Exam'rs, 246 F.Supp. 993 (E.D. La. 1965), aff'd, 384 U.S. 885, 86 S.Ct. 1924, 16 L.Ed.2d 998 (1966); Louisiana St. Bd. of Med. Exam'rs v. Fife, supra.

Intervenors argue, however, that this appeal presents a question not considered in previous litigation. This is the right of intervenors, as chiropractic patients, to exercise a reasonable choice in the method of treatment of their ills.

Intervenors' right to exercise this choice is correlative to that of the chiropractor;

> "* * * the State cannot deny to any individual the right to exercise a reasonable choice in the method of treatment of his ills, nor the correlative right of practitioners to engage in the practice of a useful profession." England v. Louisiana St. Bd. of Med. Exam'rs, 259 F.2d 626, 627 (5 Cir. 1958).

Being correlative to the chiropractor's right to practice, intervenors' right may constitutionally be limited by the same regulations and restrictions which may be validly imposed upon the chiropractor by a state in the interest of public health and welfare. See the somewhat analogous Head v. New Mexico Bd. of Exam'rs in Optometry, 374 U.S. 424, 83 S.Ct. 1759, 10 L.Ed.2d 983 (1963).

Appellants also complain that the use of verified pleadings and affidavits at the hearing below deprived them of a full hearing on the merits. We believe that the trial judge's order in this respect is fully within the discretion granted him by LSA-C.C.P. art. 3609 governing preliminary injunction. Appellants may present additional admissible evidence on the trial for permanent injunction; see Pearce v. Johnson, 213 So.2d 117 (La. App. 3d Cir. 1968), cert. denied 252 La. 960, 215 So.2d 129.

Counsel for defendant further complains that he was not served with a copy of the court's order as required by art. 3609:

> "* * * If the application [for a preliminary injunction] is to be heard upon affidavits, the court shall so order in writing, and a copy of the order shall be served upon the defendant at the time the notice of hearing is served."

We consider the lack of a copy of the order insignificant under the circumstances. The judge's handwritten order to limit proof to verified pleadings and affidavits was signed in the presence of defendant's counsel on the date originally set for hearing, March 26, 1969, when it was postponed until March 31 to allow appellants time to apply for writs. A copy would have been superfluous but could have been made had defendant desired.

Art. 3609 requires copies of affidavits to be delivered to the adverse party 24 hours before the hearing (or such shorter time as the court might order), which was not done. However, defendant was fully apprised by the petition of the names of persons alleged to have been treated by him and the dates of treatment and the kind of treatment, which was the substance of the supporting affidavits. Defendant does not suggest any disadvantage he suffered by not having the allegations in affidavit form; he certainly was in a position to have prepared counter-affidavits. Thus, although we recognize the importance of the adverse party's right to have copies of the affidavits beforehand, in substance defendant did have several days earlier all the information art. 3609 is designed to provide him.

The judgment appealed from is affirmed at defendant's cost.

AFFIRMED.

We consider the lack of a copy of the order insignificant under the circumstances. The judge's handwritten order to limit proof to verified pleadings and affidavits was signed in the presence of defendant's counsel on the date originally set for hearing, March 26, 1969, when it was postponed until March 31 to allow appellants time to apply for writs. A copy would have been superfluous but could have been made had defendant desired.

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The judgment appealed from is affirmed at defendant's cost.

AFFIRMED.

Supreme Court of Louisiana

NEW ORLEANS, 70112

APPENDIX C

LOUISIANA STATE BOARD OF
MEDICAL EXAMINERS

June 29, 1970

V.

FRANK MOORING

NO. 50,652

- - - - -

In re: Frank Mooring and Mrs. James Coombes, et al applying for certiorari, or writ of review, to the Court of Appeal, Fourth Circuit, Parish of St. Charles.

- - - - -

Writ Refused.
On the facts found by the Court of Appeal, the result is correct.

/s/ EHMcC

/s/ JBF

/s/ WBH

/s/ JWS

/s/ MEB

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
New Orleans
June 29, 1970

/s/ S. Wallace Miller
Deputy Clerk